

Panaji, 29th October, 2020 (Kartika, 7, 1942)

SERIES II No. 31

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

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### EXTRAORDINARY

Goa Legislature Secretariat

#### Notification

No. LA/Legn/2020/1151

The following Order dated 4th August, 2020 of the Hon'ble Governor of Goa and the opinion dated 9-7-2020 from the Election Commission of India, New Delhi are hereby published for general information.

*Namrata Ulman*, Secretary, Legislature.

Porvorim, 23rd October, 2020.

BEFORE THE GOVERNOR OF THE STATE OF GOA  
AT RAJ BHAVAN, DONA PAULA, GOA

Petition No. 1/2020

Mr. Shirish Q. Kamat,  
R/o. H. No. 1-E, St. Jose De Areal,  
Salcete, Goa.

...Petitioner

V/s

Shri Digamber V. Kamat,  
R/o. 1st Floor, Sanrit Apartments,  
Malbhat, Margao, Goa.

...Respondent

#### Order

By this order, I dispose of the Review Petition filed before me by Shri Shirish Q. Kamat, S/o Quessoia Kamat, R/o. H. No. 1-E, St. Jose De Areal, Salcete, Goa seeking disqualification of Shri Digamber V. Kamat, Member of the Legislative Assembly of Goa from Margao Assembly Constituency, under Section 9A of the Representation of Peoples Act, 1951.

On receipt of the above petition, I had sought the opinion of the Election Commission of India in

the matter, as required under Article 192(2) of the Constitution of India. I have since received the opinion of the Election Commission of India vide Communication No. 113/7/(G)/ECI/LET/FUNC//JUD/2019/Registry/851 dated 9th July, 2020.

The opinion of the Election Commission of India is reproduced as below:—

1. "This is a Reference dated 13-09-2019 received from the Hon'ble Governor of Goa seeking opinion of the Election Commission of India under Article 192 of the Constitution of India on the question whether Shri Digamber Vasant Kamat, Member of Legislative Assembly of Goa, has become subject to disqualification for being a member of that Assembly under Article 191 (1) (e) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.

2. This Reference arises from a Review Petition filed by Shri Shirish Q. Kamat (hereinafter, "Petitioner") under Order XL VII, Rule 1 (1) of the Code of Civil Procedure, 1908 read with Article 137 & 145 of the Constitution of India against Order dated 09-09-2017 (hereinafter, "Impugned Order"). The Impugned Order stated that Shri Digambar Vasant Kamat (hereinafter, "Respondent") did not incur disqualification under Sections 8A and 9A of the Representation of the People Act, 1951. The earlier petitions filed by the Petitioner led to references dated 17-11-2016 in Reference Case No. 5(G) of 2016 and 22-05-2017 in Reference Case No. 7(G) of 2017 wherein the Commission rendered its opinion on 20-01-2017 and 01-08-2017 respectively.

3. Brief facts in the Opinions rendered by the Election Commission of India in the above mentioned Reference Cases are as follows:

- 09-12-1980 A partnership firm, M/s Bharat Construction Engineers & Builders, was established by the Respondent.
- 06-01-1982 M/s Bharat Construction Engineers & Builders (hereinafter, "Partnership Firm") was registered with the Civil Registrar, Goa consisting of these partners:
1. Mr. Digambar Kamat (Respondent).
  2. Mr. Gurudas Kamat (Respondent's brother).
  3. Mr. Kiran Vasant Naik.
  4. Mr. Vinod Naik.
  5. Mr. Santosh Naik.
- 06-07-1984 The Partnership Firm was registered as a contractor with the Goa Public Works Department (hereinafter, PWD")
- 19-10-1989 The Partnership Firm consisted of two partners:
1. Mr. Kiran Vasant Naik.
  2. Ms. Asha Kamat (Respondent's wife).
- 30-11-1993 The Partnership Firm consisted of two partners:
1. Mr. Kiran Vasant Naik.
  2. Respondent.
- December, 1994 Respondent elected as Member of Legislative Assembly of Goa.
- 2-01-1996 The Partnership Firm consisted of two partners:
1. Mr. Kiran Vasant Naik.
  2. Ms. Asha Kamat.
- June, 1999 Respondent elected as Member of Legislative Assembly of Goa.
- May, 2002 Respondent elected as Member of Legislative Assembly of Goa.
- 01-04-2005 The Partnership Firm consisted of two partners:
1. Mr. Kiran Vasant Naik.
  2. Mr. Satish Lavande (Respondent's brother-in-law).
- May, 2005 Respondent elected as Member of Legislative Assembly of Goa.
- 13-02-2006 A company named Apollo Engineers & Contractors Pvt. Ltd. (hereinafter, "Company") was incorporated with two directors:
1. Mr. Kiran Vasant Naik.
  2. Mr. Satish Lavande (Respondent's brother-in-law).
- 06-01-2007 'Memorandum of Handing Over and Taking Over' was executed by the Company and the Partnership Firm which stated that the Partnership Firm was taken over by the Company along with all the assets, liabilities and enlistment of the Partnership Firm with the PWD in different categories with effect from 13-02-2006. Further, another Memorandum was executed stating that the benefits, liabilities and agreements (including all contracts entered into or received by the Partnership Firm from the PWD) of the Partnership Firm were transferred to the Company with effect from 13-02-2006.
- May, 2007 Respondent elected as Member of Legislative Assembly of Goa.
- 08-06-2007 Respondent sworn-in as the Chief Minister of Goa. He served as Chief Minister till 06-03-2012.
- 24-09-2007 Registration of the Partnership Firm as a contractor with the PWD was converted and renewed in the name of the Company.
- March, 2012 Respondent elected as Member of Legislative Assembly of Goa.
- 25-06-2013 Company had two directors:
1. Mr. Kiran Vasant Naik.
  2. Mr. Yogiraj Kamat (Respondent's son).

- 19-01-2017 Scrutiny of Nomination Form for the elections to the Legislative Assembly of Goa 2017.  
20-01-2017 Opinion rendered by the Election Commission of India in Reference Case No. 5 (G) of 2016 dated 17-11-2016.

In the above mentioned reference, the Commission opined on the issue of disqualification of the Respondent under Article 191 (1) (a) of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

It was opined that the Respondent could not be disqualified under Article 191(1) (a) of the Constitution of India for holding an office of profit as the Petitioner failed to produce any documentary evidence to prove so. Further, the office of Chief Minister was exempted by the Explanation clause in Article 191(1).

It was also held that since a prior order of the High Court under Section 99 of the Representation of the People Act, 1951, finding a person guilty for committing corrupt practice, was not produced by the Petitioner, the Respondent could not be disqualified under Section 8A of the Representation of the People Act, 1951.

It was observed that as per the records produced by the Petitioner, the Respondent was neither a Director/Shareholder/promoter of the Company at any given time nor was he a Partner in the Partnership Firm on the date of his nomination in 2012 or on any date subsequent to it. Therefore, the question of gaining any benefit under subsisting contracts entered into by the Company could not be established. It was also stated that the law of communion of assets was only applicable to joint holding of assets in matrimony and that it did not relate to the appointment of a person as a Director in a company. It was noted that Mrs. Asha Kamat was never a Director of the Company. Hence, the Respondent could not be disqualified under Section 9A of the Representation of the People Act, 1951.

- 11-03-2017 Respondent elected as Member of Legislative Assembly of Goa.  
01-08-2017 Opinion rendered by the Election Commission of India in Reference Case No.7(G) of 2017 dated 22-05-2017. In the abovementioned reference, the Commission opined on the issue of disqualification of the Respondent under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951.

It was opined that since a prior order of the High Court under Section 99 of the Representation of the People Act, 1951, finding a person guilty for committing corrupt practice, was not produced by the Petitioner, the Respondent could not be disqualified under Section 8A of the Representation of the People Act, 1951.

The opinion of the Commission in the case of Shri Umashankar (Reference Case No. 2 (G) of 2014) as well as the judgement of the Hon'ble Supreme Court in *Sewaram vs. Sobaran Singh* (AIR 1993 SC 212) was examined and discussed to hold that the ratio of these decisions with respect to the position of proxies was inapplicable to the case at hand. It was also stated that no evidence was produced to either show that the Respondent managed the Company or that he entered into a Government contract in the course of his business or trade. It was also observed that as per the records produced by the Petitioner, the Respondent was neither a Director/shareholder/promoter of the Company at any given point of time nor was he a Partner in the Partnership Firm on the date of his nomination in 2017 or any date subsequent to it. Hence, the Respondent could not be disqualified under Section 9A of the Representation of the People Act, 1951.

4. The Petitioner in Reference Case No. 5(G) of 2016 and Reference Case No. 7(G) of 2017 had alleged that the Respondent attracted disqualification under Section 8A and 9 A of the Representation of the People Act, 1951 for allotting works to the Company at a price of more than 50% above the estimated cost of tenders and for subsisting contracts with the Government in the name of the Company. The Petitioner had argued that the Respondent's wife Mrs. Asha Kamat, his brother-in-law Mr. Satish Lavande and his son, Mr. Yogiraj Kamat, were proxies of the Respondent in the Company. That is, the Respondent through his proxies had entered into contracts with the PWD in the name of his Company and hence, he was liable to be disqualified. It may be noted that the Petitioner had placed reliance on the Opinion tendered by the Commission in the case of disqualification of Mr. Umashankar Singh, MLA of Uttar Pradesh Legislative Assembly [Reference Case No. 2(G) of 2014] and on the case of *Sewaram vs. Sobaran Singh* [AIR 1993 SC 212].



5. On examining the petition, it was discovered that the Petitioner had referred to the Inquiry Report of the State Registrar & Head of Notary Services, Government of Goa, dated 10-05-2019, of which 108 sheets of annexures were missing. Therefore, vide Letter dated 27-11-2019 the Commission requested the Petitioner to provide the same. The Commission received the 108 sheets of annexures as well as other additional documents on 27-01-2020 from the Petitioner. These additional documents consisted of internet certified balance sheets as well as profit & loss accounts of the Company.

6. Issues raised in the present reference and in additional documents dated 27-01-2020:

i) That the Respondent through various proxies in his Company/Partnership Firm had subsisting contracts with the Government of Goa at the time of filing his nomination and the contracts were subsisting at the time of filing the present Petition.

ii) That the Impugned Order had stated that the original petition [in Reference Case No. 7 (G) of 2017] had disclosed Mr. Satish Lavande and Mr. Kiran Vasant Naik as the partners of the Partnership Firm whereas the original petition had actually stated that the partners were Mrs. Asha Digambar and Mr. Kiran Vasant Naik as per records of the Sub-Civil Registrar, Salcete, Goa. Thus, the Impugned Order travelled beyond the contents of the Petition.

iii) That the Petitioner was not informed of any document/certificate relied upon by the Commission in reaching the above stated conclusion i.e. that Mr. Satish Lavande and Mr. Kiran Vasant Naik were partners of the Partnership Firm. Therefore, his right to equality was violated.

iv) That Impugned Order with respect to the observation that Mr. Satish Lavande and Mr. Kiran Vasant Naik were the partners of the Partnership Firm, was based on forged and fabricated documents issued by the then Sub-Registrar, Salcete, Goa to the Respondent so that he could dis-associate or sever himself from the Partnership Firm and the Company which were taken over by his wife and son as proxies. This is apparent from the Inquiry Report of the State Registrar & Head of Notary Services dated 10-05-2019 submitted to the Law Department, Government of Goa.

v) That Mr. Digambar Kamat and his wife, Mrs. Asha Kamat, were governed by the Portuguese Civil Code, 1867 and therefore, by the principle of 'Communion of Assets'.

vi) That the Impugned Order failed to give its findings regarding *Sewaram vs. Sobaran Singh* [AIR 1993 SC 212].

vii) That the Respondent was a Key Management Personnel in 2012, 2013 and 2014. This was stated on the basis of certified internet copies of the balance sheets and profit & loss accounts of the Company, provided by the Petitioner, wherein under the section for 'Professional Fees & Commission' the Respondent was shown as a Key Management Personnel for the years 2012, 2013 and 2014.

7. Analysis:

i) Power of review.—

Order XL VII, Rule 1(1) of the Code of Civil Procedure, 1908 r/w Article 137 & 145 of the Constitution of India does not apply to the proceedings before the Election Commission of India in Reference Cases and as such, the Election Commission does not possess the power to review an Opinion already acted upon by the Hon'ble Governor.

However, since the present Reference has been made by the Hon'ble Governor under Article 192, it is treated as a fresh reference and the present Opinion is being returned as per the mandate of Article 192 of the Constitution of India.

ii) Alleged error in previous opinion.—

The Impugned Order stated that the facts disclosed in the previous petition show that since 01-04-2005, the Partnership Firm comprised of two partners i.e. Mr. Kiran Naik and Mr. Satish Lavande. This contention of the Petitioner essentially relates to an error in naming the proxy of the Respondent, i.e. his brother-in-law, Mr. Satish Lavande, in place of his wife Mrs. Asha Digambar. However, the non-disqualification of the Respondent was based on the fact that the Respondent was not personally involved or associated with the Partnership Firm and the Company. Hence, this contention does not have any bearing on the merits of the Opinion tendered by the Commission in Reference Case No. 7(G) of 2017.

iii) Alleged forgery by the respondent.—

With respect to the Petitioner's contention that the Respondent relied on forged and fabricated documents to show that his brother-in-law, Mr. Satish Lavande, was associated with the Company and not his wife, Mrs. Asha Kamat, it is not a fact of relevance as it would have no impact on the Opinion tendered by the Commission for the reason that the Respondent himself was not shown to be directly associated

with the Company. The Inquiry Report of the State Registrar & Head of Notary Services dated 10-05-2019 notes that:

*"Furthermore, the report stated that the copy available with M/s Prithvi Survey which had digitized the documents has a different copy of the documents with details of the Partnership Firm than the one issued by the then Sub-Registrar".*

The Report further notes as under:—

a) RTI letter dated 09-10-2017 indicates Computerization/Digitization of records done on 20-11-2009. So the records till 20-11-2009 are with Prithvi Survey Ltd.

b) As per Prithvi, last date of Reconstitution is 07-02-1996 of Bharat Construction and last known partners are Asha Digambar Kamat and Kiran V. Naik.

c) Two different Certificates are issued in 3 days, one on 21-11-2016 and other on 23-11-2016, both based on certificate dated 16-01-1981 which is not registered on that date.

d) Letter from Civil Registrar-cum-Sub-Registrar, Tiswadi, indicated that there is no circular to issue certified copy based on old record.

e) Certificates issued are prima facie not authentic.

Complaint, inquiry by the district Registrar (South) and perusal of the records placed by Shri Shirish Kamat reveals that the possibility of forgery in the Office of Sub-Registrar office, Salcete with regards to documents of M/s. Bharat Constructions cannot be ruled out.

The then Sub-Registrar, Salcete Shri Chandrakant Pissurlekar has issued the certified copy of the documents of partnership firm of which original documents are not available in his office to fall back and verify. Further, it is a settled principle than the true copy attestation or issuing of certified copy can be effected only in the circumstances wherein original copy of that document is available on record of the issuing Authority. Moreover, no any orders have been issued by Government to issue certified copy of the document by obtaining copy from the member of Public who is interested party in the matter and is applicant for the certified copy.

*Apart from above, the copies of the same documents purportedly issued by the same Authority does not match and tally with regards to its contents of the other copies. This further hints that there is every possibility of forgery in the records and issuing of the same.*

*Furthermore, the copy available with the agency M/s Prithvi Survey Pvt. Ltd. which has scanned and digitized the document has different copy with contents of the said firm than the one issued by the then Sub-Registrar. A summary inquiry conducted by the department through District Registrar (South) raises prima facie probability of forgery into Government records and lapse in procedure to issue certified copy."*

Though the State Registrar & Head of Notary Services has expressed some doubt on the authenticity of the Certificates, the Inquiry Report dated 10-05-2019 clearly states that the last known partners of the Partnership Firm were Mrs. Asha Kamat and Mr. Kiran Naik. Moreover, as the Partnership Firm was taken over by the Company with effect from 13-02-2006 along with all assets, liabilities and contracts, the history of the Partnership Firm is of no relevance for the purposes of the present Reference.

iv) Non-examination of the sewaram judgment:

The Hon'ble Supreme Court in Sewaram Vs. Sobaran Singh [AIR 1993 SC 212] held that the Appellant (i.e. Sewaram) could not prove severance of his contractual relationship with the Government (PWD) before filing his nomination paper and thus incurred disqualification. The Appellant in Sewaram Case (supra) had been disqualified on the basis of a subsisting contract through his proxy due to the reason that he did not appropriately end the contract in the first place. Further, the Appellant continued corresponding with the Government even after his election, thereby indicating his continued association with the company. The relevant extracts are reproduced herein:

*22... We are not satisfied that in the present case the contract came to an end by breach by writing the letter dated 30-1-1990 as sought to be submitted on behalf of the appellant. In the facts of the present case the contract had not come to an end but was sought to be continued through Patiram Gupta. It is an admitted fact that Patiram Gupta is the real brother and member of joint Hindu family with Sewaram appellant. Not only that, Patiram was also an attorney, holder of Sewaram during the relevant period. The correspondence even after 30-1-1990 has been made in the name of Sewaram appellant though signed by Patiram. In these circumstances, it cannot be believed that Sewaram had put an end to the contract by breach and the conduct of Sewaram and Patiram even prior to and after 30-1-1990 leads to an irresistible conclusion that the contract had not come to an end, and was subsisting, thereby incurring a*



*disqualification under Section 9-A of the Act. In case Sewaram wanted to put an end to the contract, in the normal course of behaviour and human conduct he should have gone personally to no less an authority than the Executive Engineer and to have put an end to the contract mutually or in case the concerned officers were not agreeable to end the contract mutually then he could have taken the step of ending the contract unilaterally by breach taking the risk of damages. The facts of the present case lead us to the conclusion that the appellant never intended nor in fact put an end to the contract, but continued with the contract through the proxy of his real brother Patiram."*

With regard to the issue raised by the Petitioner that the Impugned Order had not examined the Sewaram Case (supra), it is pertinent to note that this Commission not only examined but also distinguished the Sewaram Case on facts and circumstances. This fact is evident from the following extract taken from the Impugned Order:

"15. ...Similarly, the Supreme Court in Sewaram case disqualified him under Section 9A of the Representation of the People Act, 1951 on the basis of his correspondence with the Government regarding the contracts even after his election. Thus, neither the rationale nor ratio of the decisions of the Commission in Uma Shankar's case (supra) and of the Supreme Court in Sewaram's case (supra), relied upon by the petitioner, are applicable in the facts and circumstances if the present case."

v) Opportunity of being heard.—

The Petitioner has contended that he was not afforded an opportunity of being heard. It is pertinent to note that the Hon'ble Delhi High Court held in *Kailash Gehlot v. Election Commission of India* [(2018) 250 DLT 193 (DB)] that it was not necessary for the Election Commission to grant oral hearing in cases where the opinion does not call for disqualification, however, oral hearing would be necessary before the Commission could give an opinion disqualifying a legislator. Furthermore, there is no bar on the Commission from relying on documents that are beyond the original petition and in fact, Section 146 of the Representation of the People Act, 1951 gives the Commission ample powers for the discovery and production of documents in the course of an inquiry in a reference case.

vi) Key Management Personnel.—

The Respondent has been listed as the Key Management Personnel of the Company during

2012, 2013, and 2014. While this is an important factor, the same is not indicated in subsequent financial statements till 2019. Since, the Respondent was elected in 2017, his previous position in the Company would not have a bearing in the present Reference.

vii) Communion of assets.—

Mr. Digambar V. Kamat and Mrs. Asha Kamat are governed by the principle of Communion of Assets (Article 1098 and 1108 of the Portuguese Civil Code, 1860). Therefore, Mrs. Asha Kamat's position as a partner in the Partnership Firm and consequently as a shareholder in the Company contemplates that the assets acquired by her would be apportioned equally between her and the Respondent.

The principle of communion of asset in Portuguese Civil Code, 1860 states as under:

*Article 1098— Presumed regime of assets— In the absence of any contract, it is deemed that the marriage is done as per the custom of the country, except when it is solemnized in contravention of the provisions of Article 1058 Clause 1 and 2; because in such a case it is deemed that the spouses are married under the simple communion of acquired assets.*

*Article 1198—Effects of authorisation— The husband is liable for the obligations contracted with his authorisation by the wife, married under the regime of custom of the country or under simple communion of the acquired assets, but he is not liable for the obligations, which the wife, married under any other regime, contracted upon her exclusive assets or interests.*

The Income Tax Act, 1961 also contains a provision in this respect and the same is quoted below:

5A. Apportionment of income between spouses governed by Portuguese Civil Code.— (1) *Where the husband and wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as "COMMUNIAO DOS BENS") in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or a body of individuals), but such income of the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively,*

and the remaining provisions of this Act shall apply accordingly.

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head "salaries", such income shall be included in the total income of the spouse who has actually earned it.

'Body of Individuals' is a separate taxable entity recognized under the Income Tax Act, 1961 and the incomes of a Body of Individual is not added to the income of the individuals who partake in it. However, Section 5A creates an exception to this rule in view of the communion of assets under the Portuguese Civil Code, 1860. Section 5A of the Income Tax Act implies that except the income from salary, income from all other heads of income u/s 14 of the Income Tax Act, i.e. income from house property, profits & gains of business and profession, capital gains and income from other sources are clubbed together and then assessed separately in equal share to the husband and wife. The Hon'ble Bombay High Court in *Addl. CIT v. Valentino F. Pinto* [(1984) 150 ITR 408] held that Income from business run by the communion of the husband and wife married as per the custom of Goa should be assessed separately in equal share to each of them and not in the hands of the Body of Individual of the communion.

The Petitioner has relied on *Zelia M. Xavier Fernandes E. Gonsalves vs. Joana Rodrigues and Ors.* [(2012) 3 SCC 188], wherein the SC held that while deciding a petition under Section 10(f) of the Goa Panchayat Raj Act, 1994:

*There is no doubt that Section 10(f) contemplates that share or monetary interest (direct or indirect) has to be in the contract itself. The expression 'in any contract' means in regard to any contract. Could it be said that the Appellant had no indirect share or monetary interest in regard to her husband's contract with the Village Panchayat Raia when, by operation of law, she is entitled to the profits of that contract? The answer has to be in the negative. Money acquired by the Appellant's husband from the contract with the Village Panchayat Raia is 'community property' and, therefore, the conclusion is inescapable that the Appellant has indirect share, or, in any case, monetary interest in the contract awarded to her husband by the Village Panchayat Raia as the profits from the contract shall be apportioned equally between her and her husband. There is no evidence of exclusion of the Appellant from her husband's assets and income.*

The provisions contained in Articles 1098 and 1108 of the 1860 Code and Section 5A of the Income

Tax Act give the Appellant a participation in the profits of the contract and advantages like the apportionment of income from that contract. The Appellant by operation of law becomes entitled to share in the profits of the contract awarded to her husband by the Village Panchayat. From whatever way it is seen, the Appellant's participation in the profits of the contract does constitute an "indirect monetary interest" in the contract for collection of market fee awarded to her husband within Section 10(f) prohibiting the member of the Village Panchayat from having such an interest.

The Petitioner has further placed reliance on various judgments including *Dyaneshwar Narso Naik vs. State of Goa* [(2014) 6 Bom CR 434], wherein the Hon'ble Bombay High Court relied on *Zelia M. Xavier Fernandes E. Gonsalves (supra)* to state that the elected member of the Panchayat would have a pecuniary interest in the construction license of her husband. The Court held that since the elected member of the Panchayat had participated in the discussion relating to the issue of renewal of the construction license to her husband, she acted in contravention of Section 55(4) and had therefore vacated her seat under Section 12(1)(d) of the Goa Panchayat Raj Act, 1994.

The Commission has examined this proposition of the Petitioner. It may be noted that the question of disqualification of the Respondent is governed by Article 19(1) of the Constitution of India under which a person may be disqualified for being a member of the Legislative Assembly or the Legislative Council of the State if he/she is so disqualified under any law made by the Parliament. The judicial decisions referred to by the Petitioner pertain to state laws governing elections to local bodies which are not applicable to the present case.

It is pertinent to note that *Zelia M. Xavier Fernandes E. Gonsalves (supra)* is a case under Section 10(f) of the Goa Panchayat Raj Act, 1994 which states as under:

10. Disqualification for membership.— A person shall be disqualified for being chosen as, and for being, a member of the Panchayat if,—

(f) he has directly or indirectly any share or monetary interest in any work done by or to the Panchayat or any contract or employment with, under or by or on behalf of the Panchayat;

Section 9A of the Representation of the People Act, 1951 states as follows:

9A. Disqualification for Government contracts, etc.— A person shall be disqualified if, and for so



*long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.*

It is evident that Section 10(f) of the Goa Panchayat Raj Act, 1994 is wider than the law contemplated under Section 9A of the Representation of the People Act, 1951 which seeks to disqualify a person for having a subsisting contract with the appropriate Government. Section 9A does not focus on 'monetary benefits' and 'indirect share' as done in Section 10(f) of the Goa Panchayat Raj Act, 1994 above.

In *Ranjeet Singh vs. Harmohinder Singh Pradhan* [(1994) 4 scc 517], the Hon'ble Supreme Court stated that:

On a plain reading, Section 9A of the Act requires:-

- (i) That there must be subsisting contract which has been entered into by the person whose candidature is sought to be disqualified with the Government;
- (ii) That the contract is for the supply of goods to the Government;
- (iii) That the contract is for the execution of any works undertaken by the Government.

Section 9A of the Representation of the People Act, 1951 states that in order to disqualify a person, there must be a 'subsisting contract' between the concerned person and the appropriate Government for supply of goods or execution of work. The question of the deriving indirect benefits is not a condition contemplated by the provision. Hence, it is essential to establish a direct connection between the Respondent and the appropriate Government in order to disqualify him under Section 9A.

Therefore, even assuming that the Respondent derives monetary benefits due to his wife's position as a shareholder in the Company, which has a subsisting contract with the appropriate Government, this in itself is not a sufficient criterion for disqualification of the Respondent under Section 9A of the Representation of the People Act, 1951. In this regard, it may also be noted that there is nothing on record to show that Mrs. Asha Kamat has even been a Director of the Company or holds substantial shares of the Company.

#### 8. Conclusion.—

*The Hon'ble Supreme Court in Kartar Singh Bhadana V. Hari Singh Nalwa [(2001) 4 SCC 661] has stated that:*

*8. Insofar as in relevant to a case where it is alleged that a candidate holds a contract for the execution of works undertaken by an appropriate*

*Government, Section 9-A requires (a) that there should be a contract entered into by the candidate; (b) that it should be entered into by him in the course of his trade or business; (c) that it should be entered into with the appropriate Government; (d) that it should subsist; (e) that it should relate to works undertaken by that Government; and (f) that it should be for the execution of such works. The provisions of Section 9-A disqualify a citizen from contesting an election; a citizen may, therefore, be disqualified only if the facts of his case squarely fall within the conditions prescribed by Section 9-A.*

The essential requirements for disqualification under Section 9A require the Respondent to have entered into a contract with the Government of Goa which in the present case has not occurred.

Hence, in view of the above discussion, this Commission hereby returns the present Reference under Article 192 of the Constitution of India with the Opinion that the Respondent, Shri Digambar Kamat, Member of the Legislative Assembly of Goa, has not incurred disqualification under Article 191(1) (e) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.

Ashok Lavasa (Election Commissioner)	Sunil Arora (Chief Election Commissioner)	Sushil Chandra (Election Commissioner)
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In view of the opinion rendered by the Election Commission of India, as required under Article 192(2), I do not find any merits in the review petition file by the petitioner, i.e. Shri Shirish Kamat. Hence the petition dated 28-06-2019, filed for review of the order dated 09-09-2017 stands dismissed.

(Satya Pal Malik)  
Governor of Goa.

Raj Bhavan,  
Dona Paula,  
Goa : 403004.

Dated: 4th August, 2020.

#### ELECTION COMMISSION OF INDIA

Nirvachan Sadan,  
Ashoka Road,  
New Delhi - 110001

REFERENCE CASE No. 7 (G) OF 2019  
(REFERENCE FROM THE HON'BLE GOVERNOR  
OF GOA UNDER ARTICLE 192 of the  
CONSTITUTION OF INDIA)

*In re: Reference Case No. 7(G) of 2019— Reference received from the Hon'ble Governor of Goa under*



*Article 192 of the Constitution of India seeking opinion of the Election Commission of India on the Question of alleged disqualification of Shri Digambar Vasant Kamat, Member of Legislative Assembly of Goa, under Article 192 of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.*

## OPINION

1. This is a Reference dated 13-09-2019 received from the Hon'ble Governor of Goa seeking opinion of the Election Commission of India under Article 192 of the Constitution of India on the question whether Shri Digambar Vasant Kamat, Member of Legislative Assembly of Goa, has become subject to disqualification for being a member of that Assembly under Article 191 (1) (e) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.

2. This Reference arises from a Review Petition filed by Shri Shirish Q. Kamat (hereinafter, "Petitioner") under Order XLVII, Rule 1(1) of the Code of Civil Procedure, 1908 read with Article 137 & 145 of the Constitution of India against Order dated 09-09-2017 issued by the Hon'ble Governor of Goa (hereinafter, "Impugned Order"). The Impugned Order sated that Shri Digambar Vasant Kamat (hereinafter, "Respondent") did not incur disqualification under Section 8A and 9A of the Representation of the People Act, 1951. The earlier petitions filed by the Petitioner led to references dated 17-11-2016 in Reference Case No. 5(G) of 2016 and 22-05-2017 in Reference case No. 7 (G) of 2017 wherein the Commission rendered its opinion on 20-1-2017 and 01-08-2017 respectively.

3. Brief facts in the Opinions rendered by the Election Commission of India in the above mentioned Reference Cases are as follows:—

09-12-1980	A partnership firm, M/s Bharat Construction Engineers & Builders, was established by the Respondent.
06-01-1982	M/s Bharat Construction Engineers & Builders (hereinafter, "Partnership Firm") was registered with the Civil Registrar, Goa consisting of these partners: 1. Mr. Digambar Kamat (Respondent) 2. Mr. Gurudas Kamat (Respondent's brother) 3. Mr. Kiran Vasant Naik 4. Mr. Vinod Naik 5. Mr. Santosh Naik
06-07-1984	The Partnership Firm was registered as a contractor with the Goa Public Works Department (hereinafter, "PWD").
19-10-1989	The Partnership Firm consisted of two partners: 1. Mr. Kiran Vasant Naik 2. Ms. Asha Kamat (Respondent's wife)
30-11-1993	The Partnership Firm consisted of two partners: 1. Mr. Kiran Vasant Naik 2. Respondent
December 1994	Respondent elected as Member of Legislative Assembly of Goa.
2-01-1996	The Partnership Firm consisted of two partners: 1. Mr. Kiran Vasant Naik 2. Ms. Asha Kamat
June 1999	Respondent elected as Member of Legislative Assembly of Goa.
May 2002	Respondent elected as Member of Legislative Assembly of Goa.
01-04-2005	Partnership Firm consisted of two partners: 1. Mr. Kiran Vasant Naik 2. Mr. Satish Lavande (Respondent's brother-in-law)
May 2005	Respondent elected as Member of Legislative Assembly of Goa.

13-02-2006	A company named Apollo Engineers & Contractors Pvt. Ltd. (hereinafter, "Company") was incorporated with two directors: 1. Mr. Kiran Vasant Naik 2. Mr. Satish Lavande (Respondent's brother-in-law)
06-01-2007	'Memorandum of Handing Over and Taking Over' was executed by the Company and the Partnership Firm which stated that the Partnership Firm was taken over by the Company along with all the assets, liabilities and enlistment of the Partnership Firm with the PWD in different categories with effect from 13-02-2006. Further, another Memorandum was executed stating that the benefits, liabilities and agreements (including all contracts entered into or received by the Partnership Firm from the PWD) of the Partnership Firm were transferred to the Company with effect from 13-02-2006.
May 2007	Respondent elected as Member of Legislative Assembly of Goa.
08-06-2007	Respondent sworn-in as the Chief Minister of Goa. He served as Chief Minister till 06-03-2012.
24-09-2007	Registration of the Partnership Firm as a contractor with the PWD was converted and renewed in the name of the Company.
March 2012	Respondent elected as Member of Legislative Assembly of Goa.
25-06-2013	Company had two directors: 1. Mr. Kiran Vasant Naik 2. Mr. Yogiraj Kamat (Respondent's son)
19-01-2017	Scrutiny of Nomination Form for the elections to the Legislative Assembly of Goa 2017.
20-01-2017	Opinion rendered by the Election Commission of India in Reference Case No. 5(G) of 2016 dated 17-11-2016. In the above mentioned reference, the Commission opined on the issue of disqualification of the Respondent under Article 191(1)(a) of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951. It was opined that the Respondent could not be disqualified under Article 191(1)(a) of the Constitution of India for holding an office of profit as the Petitioner failed to produce any documentary evidence to prove so. Further, the office of Chief Minister was exempted by the Explanation clause in Article 191(1). It was also held that since a prior order of the High Court under Section 99 of the Representation of the People Act, 1951 finding a person guilty for committing corrupt practice, was not produced by the Petitioner, the Respondent could not be disqualified under Section 8A of the Representation of the People Act, 1951. It was observed that as per the records produced by the Petitioner, the Respondent was neither a Director/shareholder/promoter of the Company at any given time nor was he a Partner in the Partnership Firm on the date of his nomination in 2012 or on any date subsequent to it. Therefore, the question of gaining any benefit under subsisting contracts entered into by the Company could not be established. It was also stated that the law of communion of assets was only applicable to joint holding of assets in matrimony and that it did not relate to the appointment of a person as a Director in a company. It was noted that Mrs. Asha Kamat was never a Director of the Company. Hence, the Respondent could not be disqualified under Section 9A of the Representation of the People Act, 1951.
11-03-2017	Respondent elected as Member of Legislative Assembly of Goa.
01-08-2017	Opinion rendered by the Election Commission of India in Reference Case No. 7(G) of 2017 dated 22-05-2017. In the above mentioned reference, the Commission opined on the issue of disqualification of the Respondent under Article 191 of the Constitution of India read with Sections 8A and 9A of the Representation of the People Act, 1951. It was opined that since a prior order of the High Court under Section 99 of the Representation of the People Act, 1951, finding a person guilty for committing corrupt practice, was not produced by the Petitioner, the Respondent could not be disqualified under Section 8A of the Representation of the People Act, 1951. The opinion of the Commission in the case



of Shri Umashankar [Reference Case No. 2(G) of 2014] as well as the judgement of the Hon'ble Supreme Court in *Sewaram vs. Sobaran Singh* [AIR 1993 SC 212] was examined and discussed to hold that the ratio of these decisions with respect to the position of proxies was inapplicable to the case at hand. It was also stated that no evidence was produced to either show that the Respondent managed the company or that he entered into a Government contract in the course of his business or trade. It was also observed that as per the records produced by the Petitioner, the Respondent was neither a Director/shareholder/promoter of the Company at any given point of time nor was he a Partner in the Partnership Firm on the date of his nomination in 2017 or any date subsequent to it. Hence, the Respondent could not be disqualified under Section 9A of the Representation of the People Act, 1951.

4. The Petitioner in Reference Case No. 5(G) of 2016 and Reference Case No. 7(G) of 2017 had alleged that the Respondent attracted disqualification under Sections 8A and 9A of the Representation of the People Act, 1951 for allotting works to the Company at a price of more than 50% above the estimated cost of tenders and for subsisting contracts with the Government in the name of the Company. The Petitioner had argued that the Respondent's wife Mrs. Asha Kamat, his brother-in-law Mr. Satish Lavande and his son Mr. Yogiraj Kamat, were proxies of the Respondent in the Company. That is, the Respondent through his proxies, had entered into contracts with the PWD in the name of his Company and hence, he was liable to be disqualified. It may be noted that the Petitioner had placed reliance on the Opinion tendered by the Commission in the case of disqualification of Mr. Umashankar Singh, MLA of Uttar Pradesh Legislative Assembly [Reference Case No. 2(G) of 2014] and on the case of *Sewaram vs. Sobaran Singh* [AIR 1993 SC 212].

5. On examining the petition, it was discovered that the Petitioner had referred to the Inquiry Report of the State Registrar & Head of Notary Services, Government of Goa, dated 10-05-2019, of which 108 sheets of annexures were missing. Therefore, vide Letter dated 27-11-2019 the Commission requested the Petitioner to provide the same. The Commission received the 108 sheets of annexures as well as other additional documents on 27-01-2020 from the Petitioner. These additional documents consisted of internet certified balance sheets as well as profit & loss accounts of the Company.

6. Issues raised in the present reference and in additional documents dated 27-01-2020.

i. That the Respondent through various proxies in his Company/Partnership Firm had subsisting contracts with the Government of Goa at the time of filing his nomination and the contracts were subsisting at the time of filing the present Petition.

ii. That the Impugned Order had stated that the original petition (in Reference Case No. 7(G) of 2017) had disclosed Mr. Satish Lavande and Mr. Kiran Vasant Naik as the partners of the Partnership Firm whereas the original petition had actually stated that the partners were Mrs. Asha Digambar and Mr. Kiran Vasant Naik as per records of the Sub-Civil Registrar, Salcete, Goa. Thus, the impugned Order travelled beyond the contents of the Petition.

iii. That the Petitioner was not informed of any document/certificate relied upon by the Commission in reaching the above stated conclusion i.e. that Mr. Satish Lavande and Mr. Kiran Vasant Naik were partners of the Partnership Firm. Therefore, his right to equality was violated.

iv. That the Impugned Order with respect to the observation that Mr. Satish Lavande and Mr. Kiran Vasant Naik were the partners of the Partnership Firm, was based on forged and fabricated documents issued by the then Sub-Registrar, Salcete, Goa to the Respondent so that he could disassociate or sever himself from the Partnership Firm and the Company which were taken over by his wife and son as proxies. This is apparent from the Inquiry Report of the State Registrar & Head of Notary Services dated 10-05-2019 submitted to the Law Department, Government of Goa.

v. That Mr. Digambar Kamat and his wife, Mrs. Asha Kamat, were governed by the Portuguese Civil Code, 1867 and therefore, by the principle of 'Communion of Assets'.

vi. That the Impugned Order failed to give its findings regarding *Sewaram vs. Sobaran Singh* [AIR 1993 SC 212].

vii. That the Respondent was a Key Management Personnel in 2012, 2013 and 2014. This was stated on the basis of certified internet copies of the balance sheets and profit & loss accounts of the Company,

provided by the Petitioner, wherein under the section for 'Professional Fees & Commission' the Respondent was shown as a Key Management Personnel for the years 2012, 2013 and 2014.

7. Analysis:

I. Power of Review:

Order XI. VII, Rule 1(1) of the Code of Civil Procedure, 1908 r/w Article 137 & 145 of the Constitution of India does not apply to the proceedings before the Election Commission of India in Reference Cases and as such, the Election Commission does not possess the power to review an Opinion already acted upon the Hon'ble Governor.

However, since the present Reference has been made by the Hon'ble Governor under Article 192, it is treated as a fresh reference and the present Opinion is being returned as per the mandate of Article 192 of the Constitution of India.

II. Alleged error in previous opinion:

The Impugned Order stated that the facts disclosed in the previous petition show that since 01-04-2005, the Partnership Firm comprised of two partners, i.e. Mr. Kiran Naik and Mr. Satish Lavande. This contention of the Petitioner essentially relates to an error in naming the proxy of the Respondent, i.e. his brother-in-law, Mr. Satish Lavande, in place of his wife, Mrs. Asha Digambar. However, the non-disqualification of the Respondent was based on the fact that the Respondent was not personally involved or associated with the Partnership Firm & the Company. Hence, this contention does not have any bearing on the merits of the Opinion tendered by the Commission in Reference Case 7(G) of 2017.

III. Alleged forgery by the respondent:

With respect to the Petitioner's contention that the Respondent relied on forged and the fabricated documents to show that his brother-in-law, Mr. Satish Lavande, was associated with the Company and not his wife, Mrs. Asha Kamat. It is not a fact of relevance as it would have no impact on the Opinion tendered by the Commission for the reason that the Respondent himself was not shown to be directly associated with the Company. The Inquiry Report of the State Registrar & Head of Notary Services dated 10-05-2019 notes that:

*"Furthermore, the report stated that the copy available with M/s Prithvi Survey which had digitized the documents has a different copy of*

*documents with details of the Partnership Firm than the one issued by the then Sub-Registrar" .*

The Report further notes as under:

1. RTI letter dated 09-10-2017 indicated Computerization/Digitization of records done on 20-11-2009. So the records till 20-11-2009 are with Prithvi Survey Ltd.

2. As per Prithvi, last date of Reconstitution is 07-02-1996 of Bharat Construction and last known partners are Asha Digambar Kamat and Kiran V. Naik.

3. Two different Certificates are issued in 3 days, on 21-11-2016 and other on 23-11-2016, both based on certificate dated 16-01-1981 which is not registered on that date.

4. Letter from Civil Registrar-cum-Sub-Registrar Tiswadi, indicated that there is no circular to issue certified copy based on old record.

5. Certificates issued are prima facie not authentic.

*Complaint, Inquiry by the District Registrar (South) and perusal of the records placed by Shri Shirish Kamat reveals that the possibility of forgery in the Office of Sub-Registrar office, Salcete with regards to documents of M/s Bharat Constructions cannot be ruled out.*

*The then Sub-Registrar, Salcete, Shri Chandrakant Pissurlekar has issued the certified copy of the documents of partnership firm of which original documents are not available in his office to fall back and verify. Further, it is a settled principle that the true copy attestation or issuing of certified copy can be effected only in the circumstances wherein original copy of that document is available on record of the issuing Authority. Moreover, no any orders have been issued by Government to issue certified copy of the document by obtaining copy from the member of Public who is interested party in the matter and is applicant for the certified copy.*

*Apart from above, the copies of the same documents purportedly issued by the same Authority does not match and tally with regards to its contents of the other copies. This further hints that there is every possibility of forgery in the records and issuing of the same.*

*Furthermore, the copy available with the agency M/s Prithvi Survey Pvt. Ltd., which has scanned and digitized the document, has different copy with contents of the said firm than the one issued by the Sub-Registrar.*

*A Summary inquiry conducted by the department through District Registrar (South) raises prima facie*



*probability of forgery into Government records and lapse in procedure to issue certified copy”.*

Though the State Registrar & Head of the Notary Services has expressed some doubts on the authenticity of the Certificates, the Inquiry Report dated 10-05-2019 clearly states that the last known partners of the Partnership Firm were Mrs. Asha Kamat and Mr. Kiran Naik. Moreover, as the Partnership Firm was taken over by the Company with effect from 13-02-2006 along with all assets, liabilities and contracts, the history of the Partnership Firm is of no relevance for the purposes of the present Reference.

IV. Non-examination of the serwaram judgment:

The Hon'ble Supreme Court in *Sewaram vs. Sobaran Singh* [AIR 1993 SC 212] held that the appellant (i.e. Sewaram) could not prove severance of his contractual relationship with the Government (PWD) before filing his nomination paper and thus incurred disqualification. The Appellant in **Sewaram Case** (supra) had been disqualified on the basis of a subsisting contract through his proxy due to the reason that he did not appropriately end the contract in first place. Further, the Appellant continued corresponding with the Government even after his election, thereby indicated his continued association with the company. The relevant extracts are reproduced herein:

*“22. ...We are not satisfied that the present case, the contract came to an end by breach by writing the letter dated 30-01-1990 as sought to be submitted on behalf of the appellant. In the facts of the present case the contract had not come to an end but sought to be continued through Patiram Gupta. It is an admitted fact that Patiram Gupta is the real brother and member of joint Hindu family with Sewaram appellant. Not only that, Patiram was also an attorney holder of Sewaram during the relevant period. The correspondence even after 30-01-1990 has been made in the name of Sewaram appellant though signed by Patiram. In these circumstances, it cannot be believed that Sewaram had put an end to the contract by breach and the conduct of Sewaram and Patiram even prior to and after 30-01-1990 leads to an irresistible conclusion that the contract had not come to an end, and was subsisting, thereby incurring a disqualification under Section 9-A of the Act. Incase Sewaram wanted to put an end to the contract, in the normal course of behaviour and human conduct, he should have gone personally to no less an authority than the Executive Engineer and to have put an end to the contract mutually or in case the concerned officers were not agreeable to end the contract*

*mutually then he could have taken the step of ending the contract unilaterally by breach taking the risk of damages. The facts of the present case lead us to the conclusion that the appellant never intended nor in fact put an end to the contract, but continued with the contract through the proxy of his real brother Patiram.”*

With regards to the issue raised by the Petitioner that the Impugned Order had not examined the **Sewaram Case** (supra), it is pertinent to note that this Commission not only examined but also distinguished the **Sewaram Case** on facts and circumstances. This fact is evident from the following extract taken from the Impugned Order.

*“15. ...Similarly, the Supreme Court in Sewaram Case disqualified him under Section 9A of the Representation of the People Act, 1951 on the basis of his correspondence with the Government regarding the contracts even after his election. Thus, neither the rationale nor ratio of the decisions of the Commission in Uma Shankar's case (supra) and of the Supreme Court in Sewaram Case (supra), relied upon by the petitioner, are applicable in the facts and circumstances of the present case.”*

V. Opportunity of being heard:

The Petitioner has contended that he was not afforded an opportunity of being heard. It is pertinent to note that the Hon'ble Delhi High Court held in *Kailash Gehlot vs. Election Commission of India* [(2018)250 DLT 193 (DB)] that it was not necessary for the Election Commission to grant oral hearing in the cases where the opinion does not call for disqualification. However, oral hearing would be necessary before the Commission could give an opinion disqualifying a legislator. Furthermore, there is no bar on the Commission from relying on documents that are beyond the original petition and in fact, Section 146 of the Representation of the People Act, 1951 gives the Commission ample powers for the discovery and production in the course of an inquiry in a reference case.

VI. Key Management Personnel:

The Respondent has been listed as the Key Management Personnel of the Company during 2012, 2013 and 2014. While this is an important factor, the same is not indicated in subsequent financial statement till 2019. Since, the Respondent was elected in 2017 his previous position in the Company would not have a bearing in the present Reference.

VII. Communion of Assets:

Mr. Digambar V. Kamat and Mrs. Asha Kamat are governed by the principle of Communion of Assets (Article 1098 and 1108 of the Portuguese Civil Code,

1860). Therefore, Mrs. Asha Kamat's position as a partner in the Partnership Firm consequently as a shareholder in the Company contemplates that the assets acquired by her would be apportioned equally between her and the Respondent.

The principle of communion of asset in Portuguese Civil Code, 1860 states as under:

*Article 1098—Presumed regime of assets- in the absence of any contract, it is deemed that the marriage is done as per the custom of the country, except when it is solemnized in contravention of the provisions of Article 1058 Clause 1 and 2; because in such a case it is deemed that the spouses are married under the simple communion of acquired assets.*

*Article 1198 – Effects of authorisation- the husband is liable for the obligations contracted with his authorisation by the wife, married under the regime of custom of the country or under simple communion of the acquired assets, but he is not liable for obligations, which the wife married under any other regime contracted upon her exclusive assets or interests.*

The Income Tax Act, 1961 also contains a provision in this respect and the same is quoted below:

5A. Apportionment of income between spouses governed by Portuguese Civil Code:- (1) Where the husband and the wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as "COMMUNIAO DOS BENS") in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and of the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or a body of individuals), but such income of the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the remaining provisions of this Act shall apply accordingly.

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head "Salaries", such income shall be included in the total income of the spouse who has actually earned it.

'Body of individuals' is a separate taxable entity recognized under the Income Tax Act, 1961 and the

incomes of a Body of Individual is not added to the income of the individuals who partake in it. However, Section 5A creates an exception to this rule in view of the communion of assets under the Portuguese Civil Code, 1860. Section 5A of the Income Tax Act implies that except the income from salary, income from all other heads of income u/s 14 of the Income Tax Act, i.e. income from house property, profits & gains of business and professions, capital gains and income from other sources are clubbed together and then assessed separately in equal share to the husband and wife. The Hon'ble Bombay High Court in *Addl. CIT v. Valentino F. Pinto* [(1984) ITR 408] held that income from business run by the communion of the husband and wife married as per the custom of Goa should be assessed separately in equal share to each of them and not in the hands of the Body of Individual of the communion.

The Petitioner has relied on *Zelia M. Xavier Fernandes E. Gonnsalves vs. Joana Rodrigues and Ors.* [(2012) 3 SCC 188], wherein the SC held that while deciding a petition under Section 10 (f) of the Goa Panchayat Raj Act, 1994:

*There is no doubt that Section 10(f) contemplates that share or monetary interest (direct or indirect) has to be in the contract itself. The expression in any contract means in regard to any contract. Could it be said that the Appellant had no indirect share or monetary interest in regard to her husband's contract with the Village Panchayat Raia when, by operation of law, she is entitled to the profits of that contract? The answer has to be in the negative. Money acquired by the appellant's husband from the contract with the Village Panchayat Raia is 'community property' and, therefore, the conclusion is inescapable that the Appellant has indirect share, or, in any case, monetary interest in the contract awarded to her husband by the Village Panchayat Raia as the profits from the contract shall be apportioned equally between her and her husband. There is no evidence of exclusion of the Appellant from her husband's assets and income.*

*The provisions contained in Articles 1098 and 1108 of the 1860 Code and Section 5A of the Income Tax Act give the Appellant a participation in the profits of the contract and advantages like the apportionment of income from that contract. The appellant, by operation of law, becomes entitled to share in the profits of the contract awarded to her husband by the Village Panchayat. From whatever way it is seen, the Appellant's participation in the profits of the*



*contract does constitute an "indirect monetary interest" in the contract for collection of market fee awarded to her husband within Section 10 (f) prohibiting the member of the Village Panchayat from having such an interest.*

The Petitioner has further placed reliance on various judgements including *Dyaneshwar Narso Naik vs. State of Goa* [(2014) 6 Bom CR 434], wherein the Hon'ble Bombay High Court relied on *Zelia M. Xavier Fernandes E. Gonsalves (supra)* to state that the elected member of the Panchayat would have a pecuniary interest in the construction license of her husband. The court held that since the elected member of the Panchayat had participated in the discussion relating to the issue of renewal of the construction license to her husband, she acted in contravention of Section 55 (4) and had therefore vacated her seat under Section 12 (1) (d) of the Goa Panchayat Raj Act, 1994.

The Commission has examined this proposition of the Petitioner. It may be noted that the question of disqualification of the Respondent is governed by Article 191 (1) of the Constitution of India under which a person may be disqualified for being a member of the Legislative Assembly or the Legislative Council of the State if he/she is so disqualified under any law made by the Parliament. The judicial decisions referred to by the Petitioner pertain to state laws governing elections to local bodies which are not applicable to the present case.

It is pertinent to note that *Zelia M. Xavier Fernandes E. Gonsalves (supra)* is a case under Section 10 (f) of the Goa Panchayat Raj Act, 1994 which states as under:

*10. Disqualification for membership- A person shall be disqualified for being chosen as, and for being, a member of the Panchayat if, –*

*(f) he has directly or indirectly any share or monetary interest in any work done by or to the Panchayat or any contract or employment with, under or by or on behalf of, the Panchayat;*

Section 9A of the Representation of the People Act, 1951 states as follows:

*9A. Disqualification for Government contracts, etc. – A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.*

It is evident that Section 10(f) of the Goa Panchayat Raj Act, 1994 is wider than the law

contemplated under Sections 9A of the Representation of the People Act, 1951 which seeks to disqualify a person for having a subsisting contract with the appropriate Government. Section 9A does not focus on 'monetary benefits' and 'indirect share' as done in Section 10(f) of the Goa Panchayat Raj Act, 1994 above.

In *Ranjeet Singh vs. Harmohinder Singh Pradhan* [(1994) 4 SCC 517], the Hon'ble Supreme Court stated that:

*On a plain reading, Section 9A of the Act requires*

*(i) That there must be subsisting contract which has been entered into by the person whose candidature is sought to be disqualified with the Government;*

*(ii) That the contract is for the supply of goods to the Government;*

*(iii) That the contract is for the execution of any works undertaken by the Government.*

Section 9A of the Representation of the People Act, 1951 states that in order to disqualify a person, there must be a 'subsisting contract' between the concerned person and the appropriate Government for supply of goods or execution of work. The question of deriving indirect benefit is not a condition contemplated by the provision. Hence, it is essential to establish a direct connection between the Respondent and the appropriate Government in order to disqualify him under Section 9A.

Therefore, even assuming that the Respondent derives monetary benefits due to his wife's position as a shareholder in the Company, which has a subsisting contract with the appropriate Government, this in itself is not a sufficient criterion for disqualification of the Respondent under Section 9A of the Representation of the People Act, 1951. In this regard, it may also be noted that there is nothing on record to show that Mrs. Asha Kamat has ever been a Director of the Company or holds substantial shares of the company.

## 8. Conclusion

The Hon'ble Supreme Court in *Kartar Singh Bhadana v. Hari Singh Nalwa* [(2001) 4 SCC 661] has stated that:

*8. Insofar as is relevant to a case where it is alleged that a candidate holds a contract for the execution of works undertaken by an appropriate Government, Section 9-A requires (a) that there should be a contract entered into by the candidate; (b) that it should be entered into by*

*him in the course of his trade or business; (c) that it should be entered into with the appropriate Government; (d) that it should subsist; (e) that it should relate to works undertaken by that Government; and (f) that it should be for the execution of such works. The provisions of Section 9-A disqualify a citizen from contesting an election; a citizen may, therefore, be disqualified only if the facts of his case squarely fall within the conditions prescribed by Section 9-A.*

The essential requirements for disqualification under Section 9A require the Respondent to have entered into a contract with the Government of Goa which in the present case has not occurred.

Hence, in view of the above discussion, this Commission hereby returns the present Reference under Article 192 of the Constitution of India with the Opinion that the Respondent, Shri Digambar Kamat, Member of the Legislative Assembly of Goa, has not incurred disqualification under Article 191(1) (e) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.

Ashok Lavasa (Election Commissioner)	Sunil Arora (Chief Election Commissioner)	Sushil Chandra (Election Commissioner)
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Place: New Delhi

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